We therefore set aside that part of the Court Order extending the validity of the private caveat lodged by the respondent and order that it be removed from the register forthwith. The appeal is to that extent allowed. However, in the exercise of our discretion we order each party to bear his/her own costs here and in the Court below. The deposit to be refunded to the appellant.

Before departing from this appeal we would like to point out that pursuant to the National Land Code (Amendment) Act 1984 section 322 of the National Land Code 1965 has been amended by substituting the full stop after the words "interest therein" in paragraph (b) with a colon and by inserting the following proviso to sub-section (1) to read:

"Provided that such a caveat shall not be capable of being entered in respect of a part of the land."

This amendment came into force on 25.3.85 and because of this, that part of the judgment of this Court dealing with the private caveat lodged by the respondent now seems to be of academic interest only.

Order accordingly.

Solicitor : *Suppiah & Singh; Syarikat George Puthucheary.*

VENGADASALAM v. KHOR SOON WENG & ORS.

[S.C. (Lee Hun Hoe C.J. (Borneo), Mohamed Azmi & Abdoolcader S.C.JJ.) August 19 & 23, 1985]

[Kuala Lumpur – Supreme Court Civil Appeal No. 128 of 1984]

Landlord and Tenant – Whether unincorporated society registered under Societies Act has legal capacity to be tenant of premises – Societies Act 1966, s. 9(b).

Club – Whether club has legal capacity to hold tenancy – Societies Act 1966, s. 9(b).

Statutory Interpretation – Purposive and literal construction.

This was an appeal from the decision of the High Court reported in [1984] 2 M.L.J. 230. The issue before the Court was whether a club registered under the Societies Act, 1966 has the capacity to hold a tenancy. Mustapha J. decided that the club has the legal capacity to hold a tenancy. The appellant appealed.

Held: it is settled law that a lease or tenancy cannot be granted to an unincorporated society which has no legal personality as it is only a composite entity of fluctuating content and not a *persona legalis.*

Cases referred to :

(1) *Jarrot* v. *Ackerley* (1915) 113 L.T 371.
(2) *Indo-Australian Trading Co. Ltd.* v. *Hin Ann Huay Kuan & Ors.* [1956] M.L.J. 193.
(3) *Malay Women's Welfare Association* v. *Tan Ek Joo Realty Co. Ltd.* 3 M.C. 101.
(4) *Singapore Shui Hing Company (Pte.) Ltd.* v. *Singapore Sing Hua Poey Chin Association & Ors.* [1976] 1 M.L.J. 217.
(5) *Ang Bock Chwee* v. *Lim Huan Hee & Ors.* [1982] 1 M.L.J. 174.
(6) *Merdeka University Berhad* v. *Government of Malaysia* [1981] 2 M.L.J. 356, 358.
(7) *Foo Loke Ying & Anor.* v. *Television Broadcasts Ltd. & 2 Ors.* [1985] 2 M.L.J. 35.
(8) *Thompson* v. *Goold & Co.* [1910] A.C. 409, 420.
(9) *Vickers Sons and Maxim Limited* v. *Evans* [1910] A.C. 444, 445.

SUPREME COURT.

S.P Annamalai for the appellants.
C. Shanmugaiah for the respondents.

Cur. Adv. Vult.

Abdoolcader S.C.J. (delivering the Judgment of the Court): In these proceedings instituted by the appellant as the landlord of premises No. 287-L, Jalan Aman, Kulim against the respondents as the principal office-bearers of Teo Kheow Club, Kulim ('the club'), an unincorporated society registered under the Societies Act, 1966 ('the Act'), for a declaration that the club is not the tenant of the premises in question, vacant possession thereof and damages, the parties agreed to dispense with evidence on the basis that the crux of the matter involved a pure question of law, and by consent the only and cardinal issue presented for curial determination was whether an unincorporated society has the legal capacity to hold a tenancy in *suo nomine.* Mustapha bin Hussain, J. held that it can and accordingly dismissed the appellant's action.

Proceeding straight to a consideration of the basic issue in question, it is settled law that a lease or tenancy cannot be granted to an unincorporated society which has no legal personality as it is only a composite entity of fluctuating content and not a *persona legalis. Jarrot* v. *Ackerly*(1) is a decision to this effect, and this principle has been consistently followed and applied in a catenation of local cases: *Indo-Australian Trading Co. Ltd.* v. *Hin Ann Huay*

Kuan & Ors.;[2] *Malay Women's Welfare Association* v. *Tan Ek Joo Realty Co. Ltd.*;[3] *Singapore Shui Hing Company (Pte.) Ltd.* v. *Singapore Sing Hua Poey Chin Association & Ors.*;[4] *Ang Bock Chwee* v. *Lim Huan Hee & Ors.*[5] We do not think that the authorities in relation to partnership firms are pertinent in relation to the point in question.

The principle enunciated was not disputed by the respondents but it was however contended on their behalf and accepted by the learned Judge that section 9(b) of the Act materially affects the position in that it provides that the immovable property of a society may, if not registered in the names of trustees, notwithstanding the provisions of any written law to the contrary, be registered in the name of the society. The learned Judge apparently proceeded to consider and determine the matter virtually by having recourse to the maxim '*omne majus continet in se minus*' (the greater contains the less) on the premise that if a society can be registered as the proprietor of immovable property under section 9(b) of the Act, 'it is unthinkable, nor practical and indeed ridiculous', to quote him, to hold that it cannot be a tenant. We must wholly dissent. The fallacy of this argument is that it completely overlooks the fact that section 9(b) of the Act is a specific statutory provision, only permissive in nature, dealing with a situation in circumscribed circumstances where the immovable property of a society is not registered in the names of trustees in which event it *may* be registered in the name of the society itself. Paragraphs (a) and (b) of section 9 of the Act envisage as a matter of course the appointment of trustees of a society registered under the Act for the vesting and administration of its assets and make provision for cases where there are none, and a lease or tenancy not otherwise registrable under the National Land Code, 1965 such as a monthly tenancy would normally be in the name of any such trustees or of one or more of its office-bearers. Section 9(b) of the Act therefore only makes provision for situations which necessitate its functional operation and application.

The provisions of paragraph (b) of section 9 of the Act should furthermore be contrasted with those of paragraph (a) thereof in relation to movable property which categorically enact, bereft of any permissive element, that the movable property of a society, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of the society, and in all proceedings civil and criminal, may be described as the property of the governing body of the society by its proper title if known. We cannot therefore see in the circumstances that the provisions of section 9(b) of the Act alter or affect in any way the fundamental juristic principle we have adumbrated as to the legal capacity of a society, or rather the lack of it, to hold a tenancy.

It would appear to us that the learned Judge has in fact by his determination in this matter purported to inject policy considerations in his construction of the requisite provisions of the Act in the face of its textual connotation. This would be taking statutory construction beyond its permissible limits, and we would refer to what has been said in this regard in *Merdeka University Berhad* v. *Government of Malaysia*[6] (at page 358). Mr. Shanmugaiah for the respondents in answer to a question we put to him agrees that the learned Judge has by construction extended the ambit of the provisions of section 9(b) of the Act but adds 'by necessary implication', as he puts it. The provisions of section 9(b) of the Act *ex facie* and more particularly when read in contrast with those of paragraph (a) of that section clearly point to a postulate for a purposive and literal construction, and we would refer in relation to this to what has been said by this court in its very recent judgment in *Foo Loke Ying & Anor.* v. *Television Broadcasts Ltd. & 2 Ors.*[7]

We can see no justification for extending the ambit of section 9(b) of the Act and any exercitation purporting to fill in textual details in a statute on policy considerations would be, to reiterate what was said in *Foo Loke Ying* (*supra*), no less than an unwarranted judicial transgression into the legislative arena and an attempt to obturate a statutory hiatus (if indeed there is any but we see none in any event in this case) which is not a curial function. We would in this regard also advert to the decision of the House of Lords in *Thompson* v. *Goold & Co.*[8] where Lord Mersey said in his speech (at page 420): "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do". Even more pertinent perhaps would be the speech of Lord Loreburn, L.C., in *Vickers, Sons and Maxim, Limited* v. *Evans*[9] when he said (at page 445):

> "My Lords, this appeal may serve to remind us of a truth sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here not what the Act ought to have said, but what it does say; ...

The appellant's contention involves reading words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

We accordingly hold that the club has no legal capacity to hold the tenancy of the premises in question, and in the event at the conclusion of argument allowed the appeal, set aside the order of the learned Judge and granted the relief sought by the appellant but made no order for the costs of this appeal at the request of counsel appearing for him. The deposit in court lodged by way of security is to be returned to the appellant.

Appeal allowed.

Solicitors: *Annamalai & Co.; C. Shanmugaiah & Co.*

ACE KING PTE. LTD. v. CIRCUS AMERICANO LTD. & ORS. (No. 2)

[F.C. (Lee Hun Hoe C.J. (Borneo), Mohamed Azmi & Abdoolcader F.JJ.) August 21, 1984]

[Kuala Lumpur – Civil Appeal No. 265 of 1983]

Practice and Procedure – R.H.C. 1980, O.18 r. 19.

In this case, the defendants cross-appealed against the decision of the High Court ([1985] 2 M.L.J. 75). The Federal Court dismissed the cross-appeal but observed that the learned Judge should not have held as he did as stated in Ground 2 of the Notice of cross-appeal which is reproduced below:

"NOTICE OF CROSS-APPEAL

Take notice that, on the hearing of the above appeal, Gerald Ward Cottle (also known as Gerry Cottle) the 2nd Respondent abovenamed will contend that the decision of the Honourable Dr Justice Zakaria bin Yatim given at Kuala Lumpur on October 17, 1983 ought to be varied to the extent and on the grounds hereinafter set out:

1. That the Court had no jurisdiction in law to grant the reliefs claimed by the Appellant which are contained in the Order dated August 11, 1983 and as varied by the Order of Court dated August 26, 1983 on the grounds that the relief claimed by the Plaintiffs is unknown in law and is not expressly provided for in the Specific Relief Act 1950 nor in paragraph 6 of the Schedule to the Courts of Judicature Act 1964.

2. That the Learned Trial Judge misapprehended the purpose of Order 18 Rule 19 of the Rules of the High Court and the inherent jurisdiction of the Court in holding:–

(i) 'I am therefore of the opinion that a contract has been concluded between the Plaintiffs and the Defendants'

(ii) 'That a legally binding and enforceable agreement was indeed concluded on March 3, 1976,

especially when existence of the contract is a question of construction which has to be decided at a full trial with the benefit of *viva voce* evidence and not on Affidavit evidence at an interlocutory stage and therefore that part of the judgment should be varied to such extent as this Court deems fit."

The appellants withdrew their appeal.

FEDERAL COURT.

J.G. Bernatt for the appellants.
Robert Lazar for the 2nd respondent.

ORDER OF THE FEDERAL COURT.

THIS CROSS-APPEAL coming up for hearing this day in the presence of Mr. Robert Lazar of Counsel for the Second Respondent and Mr. J.G. Bernatt of Counsel for the Appellants *AND UPON READING* the Record of Appeal filed herein *AND UPON HEARING* submissions of Counsel aforesaid *IT IS ORDERED* that the Notice of Cross-Appeal herein be and is hereby dismissed *AND IT IS FURTHER OBSERVED* that the learned Judge should not have held as he did as stated in ground 2 of Notice of Cross-Appeal *AND IT IS LASTLY ORDERED* that the costs of this Cross-Appeal be costs in the cause.

GIVEN under my hand and the Seal of the Court this August 21, 1984.

Sgd. K.S. TAN
Senior Assistant Registrar
Federal Court,
Malaysia,
Kuala Lumpur.

Solicitors: *Bernatt Pereira & Co.; Shearn Delamore & Co.*